

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3056 OF 2019

Rahul Macchindra Shinde @ Barkul

Applicant

versus

The State of Maharashtra

Respondent

Mr.Rajiv Patil, Senior Advocate, with Adv.Saurabh Raut i/by Adv.
Hasan Pasha Patel for applicant.

Mr.S.R.Agarkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 26th August 2021

PC :

1. This is an application for bail under Section 439 of Code of Criminal Procedure in connection with CR No.I-122 of 2017 registered with Manpada Police Station, Thane for offences under Sections 395, 397 and 412 of Indian Penal Code. Subsequently Sections 3(1)(ii), 3(2) and 3(4) of Maharashtra Control of Organized Crimes Act, 1999 ('MCOCA Act' for short) were invoked. The applicant was arrested on 10th March 2017.

2. The prosecution case is that Police received information that some thieves have entered into the premises for committing robbery. Police proceeded to the said place. It was noticed that five persons were present in the premises. One of them was carrying knife and article was stolen by him. All of them tried to run away from the place of incident. Police managed to apprehend one person amongst the five persons. He disclosed his name as Datta Shinde. He showed three places where theft were committed. The investigation revealed

that accused has snatched the cell phone of the watchman who was on duty and theft in the house of Harishchandra Walavalkar. The ornaments were recovered at the instance of accused. Involvement of applicant was disclosed during the course of investigation. It is the case of prosecution that the applicant and others are indulging in unlawful activities as a member of crime syndicate and committed several offences of similar nature. The applicant is the gang leader. About 21 cases were registered against him out of which 9 cases are resulted in acquittal and 11 cases are pending against him. Statements of witnesses were recorded. Approval was granted for invoking provisions of MCOC Act. Subsequently sanction was also accorded for prosecution under the provisions of MCOC Act. On completing investigation charge sheet was filed.

3. The applicant had preferred application for bail before Special Court constituted under MCOC Act. The said application was rejected vide order dated 4th April 2019.

4. Learned Senior Advocate Mr.Patil submitted that the applicant is in custody from 10th March 2017 i.e. for a period of about three and half years. There is no progress in trial. The applicant cannot be incarcerated in custody for indefinite period. The provisions of MCOC Act are not attracted in the present case. The applicant is on bail in the previous case. Most of the cases are resulted in acquittal. There are discrepancies in the test identification parade. Only few witnesses have identified the applicant. The memorandum of statement of the applicant was recorded u/s.27 of Evidence Act, which has resulted in recovery of articles from the co-accused Amit Bagrecha. The said accused has been granted bail. There is no eye

witness to the incident of robbery committed in the house of Walavalkar. The statement of Walavalkar was recorded. He is not the eye witness to the incident.

5. Learned APP submitted that there is no sufficient evidence showing involvement of the applicant in crime. Stringent provisions of MCOC Act are invoked against applicant and others. The applicant is gang leader. He has formed a gang and several cases of similar nature are registered against him. He is an habitual offender. He has been identified by the witnesses. Provisions of MCOC act are supported by evidence on record. The applicant is continuously indulging in unlawful activities and committed several crimes of robbery. The prosecution has also filed affidavit-in-reply dated 6th August 2021 opposing application for bail.

6. The incident in question had occurred on 4th March 2017. On receipt of information Police visited the spot. Five persons were noticed at the scene of offence. They were involved in the commission of crime. The FIR was registered on 4th March 2017. One of the accused was apprehended on the spot. He had disclosed the places where the theft were committed. Investigation revealed that accused were involved in the commission of offence in the house of Walavalkar. They had also snatched the mobile phone of the watchman of building. The statement of Walavalkar was recorded on the same day. He is not an eye witness to the incident. However, he has fortified the fact that there was robbery in his house. Television, necklace and bangles were missing from his house. He received information from the neighbour Anil Kadale that lock of his house was broke opened and the accused have entered in his house

and committed robbery. The statement of Surendra Pal was recorded on 4th March 2017. He was deployed as the watchman in the building known as Lodha Herigate. He noticed five persons. He was threatened and the accused had snatched his cell phone. The statement of Mangesh Ghadigaonkar dated 4th March 2017 indicate that he received a phone call from his neighbour Ganesh Khatate that robbers have broke opened the lock of his house and committed theft. He visited his house and found that cash lying in the house was taken away. The statement of Dhananjay Tari, Pooja Tari and Kirti Tari were recorded. They have stated that in the night at about 3.00 am, the robbers entered in the area. They gave call to Police and pursuant thereto the Police had arrived and one of the accused was apprehended. The statement of Prathamesh Walavalkar provide details of the articles stolen from his house. Similar statement of other witnesses also indicate that the accused were present in the prescient where the robbery was committed. The accused was threatened the witness. The statement of Policemen who had proceeded to the place of incident, were also recorded. They have depicted the incident and stated that one of the accused was nabbed at the place of incident. He showed the places where robberies were committed. Test identification parade was conducted in which Kirti Tari, Pooja Tari had identified the applicant.

7. The applicant was arrested on 10th March 2017 from Osmanabad. He had disclosed that stolen articles were sold to Amit Bagrecha and articles worth Rs.2.20 lakh were recovered from Amit Bagrecha. Weapons viz two knives used in the crime, were recovered from the applicant. Three witnesses have identified the applicant. Statements of eye witnesses refer to involvement of applicant. The

provisions of MCOC Act were invoked against applicant. The applicant was involved in several cases. The list of seven cases pending against applicant is provided in the affidavit-in-reply filed by prosecution. It is the case of prosecution that applicant is the gang leader of organized crime syndicate and committed series of offences by use of violence or threat of violence. He is involved in commission of offence in Mumbai, Thane and Osmanabad and the said gang was named as Chaddi-Baniyan gang. The gang is involved in committing several cases, the details of which are provided in the affidavit-in-reply. There is sufficient material against applicant to show his involvement in the offence, He is the head of gang and has committed several similar offences. In light of restrictions under Section 21(4) of MCOC Act and considering the material on record, no case for grant of bail is made out. Hence, the Bail Application No.3056 of 2019 is rejected.

(PRAKASH D. NAIK, J.)

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